

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-4083

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CARLOS ANTONIO CASTRO-CABRERA,

Petitioner,

Docket No.
75 4083

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

PETITIONER'S BRIEF AND APPENDIX

William H. Oltarsh
Attorney for Petitioner
225 Broadway
New York, N. Y. 10007

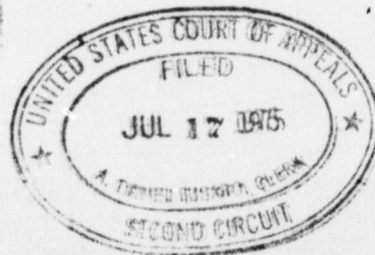


TABLE OF CONTENTS

	<u>Page No.</u>
Statement of the Issues	1-2
Statement of the Case	2
Statement of the Facts	2-4
ARGUMENT:	4-10
1. The Immigration Judge should have granted a motion to suppress because the Immigration & Naturalization Service lacked probable cause or reasonable suspicion to arrest petitioner.	
2. The Immigration Service had no right to dispense with a warrant in view of the fact that there was no urgent situation which required that the Immigration Service dispense with the requirement of a warrant.	
3. The Service should have suppressed the evidence which resulted from their failure to provide petitioner with Miranda warnings.	
Conclusion	10

CASES CITED

<u>Abel v. U.S.</u> (1960), 362 U.S. 217, 4 L. Ed. 2d 668, 80 S. Ct. 683, reh. den. 362 U.S. 984, 4 L. Ed. 2d 1019, 80 S. Ct. 1056	5
<u>Beck v. Ohio</u> (1964), 379 U.S. 89, 13 L. Ed. 2d 142, 85 S. Ct. 223	5
<u>Cheung Tin Wong v. INS</u> , 468 F. 2d 1123	7
<u>Condrado Almeida-Sanchez v. U. S.</u> , 413 U.S. 266, 93 S. Ct. 2535, 37 L. Ed. 2d 596 (1973).	7
<u>Draper v. U.S.</u> , (1959), 358 U.S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329	5,7,9
<u>Henry v. U. S.</u> , 361 U. S. 98	6

	<u>Page No.</u>
<u>Miller v. U. S.</u> (1958), 357 U. S. 301	9
<u>Miranda v. Arizona</u> , 384 U. S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)	8,9,10
<u>Orozco v. Texas</u> , 394 U.S. 324, 89 S. Ct. 1095, 22 L. Ed. 2d 311 (1969)	10
<u>Recznik v. Lorain</u> (1968), 393 U.S. 166, 21 L. Ed. 2d 317, 89 S. Ct. 342	5
<u>Spinelli v. U. S.</u> , 393 U. S. 410	6
<u>Terry v. Ohio</u> , 398 U. S. 1, 88 S. Ct. 1869, 20 L. Ed. 2d 889 (1968)	7
<u>Weeks v. U. S.</u> (1914), 232 U. S. 383	7
<u>Whiteley v. Warden of Wyoming State Penitentiary</u> , (1971), 401 U. S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031	5
<u>Wong Sun v. U. S.</u> (1963), 371 U. S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407	5
<u>Immigration & Nationality Act</u> , 66 Stat. 163 (1952), As amended: Section 287	7

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JULY TERM 1975

Docket No. 75-4083

CARLOS ANTONIO CASTRO-CABRERA,

Petitioner-Appellant,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

PETITIONER-APPELLANT'S BRIEF

Statement of the Issues

1. Whether the Immigration Judge should have granted a motion to suppress because the Immigration and Naturalization Service lacked probable cause or reasonable suspicion to arrest the petitioner-appellant.
2. Whether the Immigration Service had the right to dispense with a warrant in view of the fact that there was no urgent situation that re-

quired that the Immigration Service dispense with the requirement of a warrant.

3. Whether the Service failed to provide petitioner with Miranda warnings which resulted in the Service obtaining admissions which should have been suppressed.

Statement of the Case

Pursuant to Sec. 106(a) of the Immigration & Nationality Act, 8 U.S.C. Sec. 1105(a), petitioner petitions this Court for review of a final order of deportation entered against him by the Board of Immigration Appeals on April 16, 1975.

Statement of the Facts

Petitioner-appellant is a native and citizen of Ecuador who entered the United States at Tampa, Florida on July 26, 1972, at which time he was admitted as a non-immigrant crewman authorized to remain for the period of time that the vessel remained in port, not to exceed 29 days. He remained in the United States thereafter without authority.

At 11 P. M. on June 26, 1974, the Hempstead police came to the door of his home asking for him by name, and upon his admitting that he was one Carlos Castro, he was arrested. The police gained entry to his apartment when he opened his door in response to their knock. Immediately after identifying himself, the police searched him and took him to the police station where they called the Immigration Service, and the appellant was taken to the Immigration Service at 9 A. M. the next day. At Immigration he was searched again and his documents taken from him.

The petitioner-appellant was never charged with any crime by the

police in Hempstead and he was not advised of his rights until after he was taken to the Immigration Service at which time he was questioned.

On June 28, 1974 at a deportation hearing, appellant demanded that the Immigration Judge hold a separate hearing on the issue of his illegal arrest and to subpoena the arresting officers and under the Freedom of Information Act to examine his file. Petitioner-appellant alleged that the proceedings had been instituted as the result of an unlawful arrest and illegal search and seizure and that the evidence presented to sustain deportability should be therefore suppressed.

At the deportation hearing the Immigration Judge refused to hold a separate hearing on the issue of illegal arrest, search and seizure but established in the deportation proceedings that at or about 11 P. M. in the evening of June 26, 1974, petitioner-appellant was arrested by the police in Hempstead and taken to the police station where he was questioned. It was established that the Hempstead police took petitioner-appellant into custody on the basis of an anonymous letter, the original of which was sent to Immigration Service and copies to the Chief of Police in Hempstead. It was admitted by the Service that no warrant for the arrest of petitioner was obtained.

At the deportation hearing, petitioner did not admit deportability and moved that the evidence against him be suppressed on the ground that knowledge of his illegal presence in the United States was obtained by virtue of an illegal arrest and that as a result the evidence obtained by said illegal arrest should be suppressed. It was also alleged that the

Service had failed to provide appellant with Miranda warnings and that as a result any admissions made by him after his arrest should be suppressed.

The Immigration Judge denied the motions of petitioner-appellant and entered an order of deportation against him. Appeal was timely filed with the Board of Immigration Appeals on the ground that petitioner had not been afforded a hearing apart from the deportation hearing on the motion to suppress the evidence; that the Judge failed to suppress all the evidence obtained by the Immigration Service as a result of the illegal arrest; and that the Judge had failed to suppress all the evidence obtained by the Immigration Service as a result of the failure to afford Miranda warnings to appellant.

On the 16th of April, 1975, the Board of Immigration Appeals sustained the finding of the Immigration Judge and dismissed the appeal. The Board in dismissing the appeal found that the Immigration Judge's denial of voluntary departure was a proper exercise of his discretion.

This appeal is from the order made by the Board of Immigration Appeals on April 16, 1975.

ARGUMENT

1. THE IMMIGRATION JUDGE SHOULD HAVE GRANTED A MOTION TO SUPPRESS BECAUSE THE IMMIGRATION & NATURALIZATION SERVICE LACKED PROBABLE CAUSE OR REASONABLE SUSPICION TO ARREST PETITIONER.

The Supreme Court has held that for an arrest without warrant to be constitutional, the facts and circumstances within the knowledge of the arresting officer must be reasonably trustworthy and sufficient to enable a reasonable and prudent man to form a judgment that the suspected person

had committed or was committing an offense. Beck v. Ohio (1964), 379 U. S. 89, 13 L. Ed. 2d 142, 85 S. Ct. 223. Officers cannot arrest on the basis of mere suspicion. Wong Sun v. U.S. (1963), 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407. A "reliable" informer may be used provided that some of the information provided has been verified. Draper v. U.S. (1959), 358 U. S. 307, 3 L. Ed. 2d 327, 79 S. Ct. 329. In the case at bar the arresting officers had not obtained a warrant before the arrest, and they submitted no proof that they had availed themselves of a reliable informer or verified any of the information provided.

Consequently the Immigration Judge should have granted the motion to suppress and dismissed the case because the Immigration Service lacked clear, convincing and unequivocal legal evidence to prove that appellant was illegally within the United States.

A mere tip by an informer is not enough to create probable cause to arrest without a warrant. Even if a search warrant is obtained, the police must show more than an assertion by an informer. Certainly as much is required without a warrant. Recznik v. Lorain (1968), 393 U.S. 166, 21 L. Ed. 2d, 317, 89 S. Ct. 342. If less evidence were required for an arrest without a warrant, it would discourage resort to the procedures for obtaining a warrant. Whiteley v. Warden of Wyoming State Penitentiary (1971), 401 U.S. 560, 28 L. Ed. 2d 306, 91 S. Ct. 1031.

District Directors of the Immigration Service are authorized to issue warrants. See Abel v. U.S., (1960), 362 U.S. 217, 4 L. Ed. 2d 668, 80 S. Ct. 1056. There was no justification here to dispense with a warrant.

2. THE IMMIGRATION SERVICE HAD NO RIGHT TO DISPENSE WITH A WARRANT IN VIEW OF THE FACT THAT THERE WAS NO URGENT SITUATION WHICH REQUIRED THAT THE SERVICE DISPENSE WITH THE REQUIREMENT OF A WARRANT.

In the case at bar the police went to arrest petitioner-appellant as a result of having received an anonymous letter which accused him of being illegal and threatening to kill a number of persons and having homicidal tendencies, carrying a knife and trafficking in narcotics. The law is clear that the information the police officer must act upon must be something more substantial than a casual rumor and something more substantial than a mere accusation. Spinelli v. United States, 393 U.S. 410. Henry v. United States, 361 U.S. 98, holds that for an arrest to be valid the facts and circumstances known to an officer must warrant him in believing that an offense had been committed. The Court stated that this requirement must be strictly enforced to protect the citizen. In the case at bar even though the arrest and search subsequently disclosed that the alien had no authority to remain in the United States, a mere suspicion is not enough for an officer of the law to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that the citizen be subject to easy arrest. Henry v. United States, supra. In the case at bar the officers had no probable cause to arrest petitioner-appellant. Thereafter when he was turned over to the Immigration officers, the facts which were ascertained as a result of the initial illegal arrest could not subsequently justify the illegal arrest and search. The Judge should have granted the motion to suppress since the case against the appellant rested solely upon evidence which should have been suppressed.

Pursuant to a recent decision of the United States Supreme Court in Condrado Almeida-Sanchez, petitioner, v. The United States, 93 Supreme Court 2535 (1973) the Court held that Section 287 of the Immigration and Nationality Act could not justify a warrantless search without probable cause. The Court stated that Section 287 does not declare a field day for the government to search. The Court insisted upon probable cause as a minimum requirement.

There was no independent evidence to justify reasonable suspicion. Terry v. Ohio, 398 U.S. 1, 88 Supreme Court 1869, 20 L. Ed. 2d 889 (1968) held that it intrudes upon constitutionally guaranteed rights if an arrest is based on nothing more substantial than inarticulate hunches. To hold otherwise would give the Immigration officer an impermissible opportunity to detain any foreign looking person, any place, any time, with no more than a hunch or surmise that he is illegally here. Cheung Tin Wong v. Immigration and Naturalization Service, 468 F. 2d 1123, held that it would not be enough for an Immigration officer to question an individual simply because he looked to be of foreign descent.

At the moment the arrest was made the officers had acted upon prior information which was not proved sufficiently trustworthy to warrant a prudent man in believing that the person arrested had committed or was committing the act complained of. Draper v. U.S., *supra*. 358 U.S. 307.

Since 1914 the Supreme Court has held that as a rule of constitutional law fruits of an unreasonable arrest, search and seizure must be suppressed. Weeks v. United States (1914) 232 U.S. 383. To hold that the nature of the

deportation hearing or the evidence developed at the hearing could buttress probable cause has never been condoned by any Court. The findings of the Immigration Judge were contrary to these Supreme Court decisions.

Miranda v. Arizona 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966).

Under the Fifth Amendment to the Constitution any admissions which the appellant made after being apprehended without being accorded the Miranda warnings were inadmissible. Since he was in custody at the time the officers questioned him, even admitting *arguendo* that he told the officers he was an alien, his statements would not have been admissible since he had not been informed of his rights.

The Immigration Judge alleges that the Service was in possession of sufficient independent documentary evidence relating to this respondent prior to the alleged unlawful arrest of June 26, 1974 to establish the appellant's deportability, viz., Form I-409, Report of Deserting Crewman, received August 16, 1974; Telegraphic message from the District Director in Newark to the Central Office in Washington identifies him by name. It is clear, however, from the evidence presented that the arrest of this alien was not made pursuant to this Warrant. In the files of the Immigration Service a warrant did exist which was issued prior to June 26, 1974. The telegraphic message from the District Director was sent to the Central Office in Washington on August 29, 1972. The Immigration officers did not arrest the appellant as a result of this warrant but instead as a result of the unlawful arrest by the Hempstead police which led them to appellant. Only after the illegal arrest took place did Immigration officers make the connection between the person arrested by the Hempstead police and the per-

son for whom a warrant had been issued in 1973. Fourth Amendment, U. S.

Constitution; Art. 1, Sec. 12 of the New York State Constitution.

It is basic to our idea of constitutional law that a warrant does not remain indefinitely valid. It is a general rule that officers of the government cannot stop or otherwise interfere with persons in this country as they move around or travel throughout the land. These officers entered the premises of the appellant without first giving him notice of their authority and purpose. This is in violation of his constitutional rights.

Miller v. United States (1958) 357 U.S. 301.

Officers cannot arrest on the basis of mere suspicion without basing it upon information from a reliable informer or verifying some of the information by what the officers themselves see before arresting a subject.

Draper v. United States, *supra* 358 U.S. 307.

3. WHETHER THE SERVICE FAILED TO PROVIDE PETITIONER WITH MIRANDA WARNINGS WHICH RESULTED IN THE SERVICE OBTAINING ADMISSIONS WHICH SHOULD HAVE BEEN SUPPRESSED.

Petitioner-appellant was not accorded Miranda warnings until he was at the Immigration office although he was arrested by the police without a warrant a day prior to his delivery to Immigration.

The Hempstead police, who arrested petitioner-appellant under a specious criminal charge, deprived him of his freedom of action and took a statement from him which revealed that he was an illegal alien. As a result, Miranda v. Arizona, *supra*, was not complied with in that indigent persons deprived of freedom of action must be advised before any statement is taken from them and that if he wants an attorney, counsel will be provided for him. It appeared that petitioner-appellant was a prospective

criminal defendant and since he was not advised of his right to be silent, to be represented by counsel and to have counsel supplied, the evidence obtained by his admissions must be suppressed. Miranda v. Arizona, supra. The Miranda rule has been held to apply to criminal prosecutions. In this case petitioner-appellant was arrested under the color of a criminal prosecution and since his constitutional rights were not accorded him, any evidence of "illegality" should be suppressed. Orozco v. Texas, 394 U.S. 324, 89 S. Ct. 1095; 22 L. Ed. 2d 311 (1969).

Conclusion

The decision of the Board of Immigration Appeals should be reversed and the deportation proceedings dismissed and terminated.

Respectfully submitted.

WILLIAM H. OLTARSH
Attorney for Petitioner-
Appellant

INDEX

RECORD OF PROCEEDINGS, DEPORTATION PROCEEDINGS

CARLOS ANTONIO CASTRO-CABRERA

Immigration and Naturalization Service File A16 030 543

PAGE

1. Decision of Board of Immigration Appeals dated 4/16/75.....01-02
2. Notice of Appeal to Bd. of Immigration Appeals dated 8/9/74....03
3. Brief in Support of Appeal, Form I-290A.....04-11
4. Letter to Henry I. Millman of INS dated 9/6/74.....12
5. Anonymous letter dated 6/20/74.....13-14
6. Decision of the Special Inquiry Officer dated 8/6/74.....15-22
7. Transcript of Hearing before Special Inquiry Officer
dated 7/25/74.....23-47
8. Transcript of Hearing before Special Inquiry Officer
dated 7/29/74 continued.....48-66
9. Respondent's Motion dated 7/5/74.....67-68
10. Order to Show Cause dated 6/27/74.....69



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

File: A16 030 543 - New York

APR 16 1975

In re: CARLOS ANTONIO CASTRO-CABRERA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William H. Oltarsh, Esquire
225 Broadway
New York, New York 10007

CHARGES:

Order: Sec. 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - After admission as non-
immigrant (crewman), remained longer
than permitted

APPLICATION: Termination of proceedings or voluntary
departure

This is an appeal from an order of an immigration judge finding the respondent deportable as charged, denying his request for termination of the proceedings, denying his application for voluntary departure and directing his deportation to Ecuador. The appeal will be dismissed.

Counsel contends that the proceedings should be terminated because they are tainted by the respondent's allegedly illegal arrest and detention by local police in New York, who turned him over to the custody of the Service. While evidence obtained as a result of an unlawful arrest may be suppressed in subsequent

01

proceedings, we agree with the immigration judge that the documentary evidence presented by the Service relating to the respondent is untainted since it was independently adduced prior to the respondent's arrest, and establishes his deportability by clear, convincing and unequivocal evidence. It is settled law that, beyond the suppression of unlawfully obtained evidence, an illegal arrest has no effect on the power of a tribunal to try the person so arrested, and that this applies to deportation proceedings, Guzman-Flores v. INS, 496 F.2d 1245 (7 Cir. 1974); La Franca v. INS, 413 F.2d 686, 689 (2 Cir. 1969).

We find further that the immigration judge's denial of voluntary departure to the respondent was a proper exercise of his discretion. Accordingly, the decision of the immigration judge will be affirmed and the following order will be entered.

ORDER: The appeal is dismissed.

Chairman

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:
IMMIGRATION AND NATURALIZATION SERVICE

Fee Stamp

In the Matter of:

CASTRO-CABRERA, CARLOS ANTONIO

File No. A16 030 543

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated August 6, 1974, in the above entitled case.

2. Briefly, state reasons for this appeal.

Failure to give Miranda warnings in accordance with the Fifth Amendment. Illegal search and seizure and arrest resulting in tainted evidence thereby abrogating respondent's rights under the Fourth Amendment.

3. I do not desire oral argument before the Board of Immigration Appeals in Washington, D. C.
(do) (do not)

4. I am filing a separate written brief or statement.
(am) (am not)

Signature of Appellant (or attorney or representative)

WILLIAM H. OLTARSH

(Print or type name)

August 9, 1974

Date

225 Broadway, New York, N.Y. 10007
Address (Number, Street, City, State, Zip Code)

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

03

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

-----X
including his alias as "Carlos Castro". The alien was never

In the Matter of:

CARLOS ANTONIO CASTRO-CABRERA

other a.k.a.

File No. A16 030 543

CARLOS CABRERA and PEDRO GOYA,

Respondent.

-----X
The alien was not advised of his rights until after

he was taken into custody by the police and subsequently by
THE FACTS

the Immigration Service. The first time he was presented

The alien was arrested about 11 o'clock in the
evening of June 26th at his home. Immediately prior to

his arrest he was sleeping and was not in the process of
committing any crime or illegal act immediately prior to
his arrest. The Hempstead police came to his door and

asked him his name and he said his name was Carlos Castro

and he was arrested. They gained entry into his apartment

when he opened the door in response to their knock. Im-

mediately after giving his name they took everything out

of his pockets by directing him pursuant to their author-

ity to give him everything in his pockets. Thereafter he

was taken to the police station and at the police station

searched him and then the police called Immigration and

sent the alien respondent to the Immigration Service the

04

next day at 9 o'clock in the morning. At the Immigration Service the alien was searched and his documents were taken including his alien departure record. The alien was never charged with any crime by the police in Hempstead and in no other way communicated with the Immigration Service or received any communication from them until he was served with the order to show cause.

The alien was not advised of his rights until after he was taken into custody by the police and subsequently by the Immigration Service. The first time he was presented with a notice of his rights was at the Immigration Service when he was questioned there.

From the evidence of record it appeared that the Hempstead Police took respondent into custody on the basis of an anonymous letter of June 20, 1974, a copy of which is annexed hereto. The original was allegedly sent to the Immigration Service and copies to the Chief of Police at Hempstead, New York, and Westbury, New York.

At the deportation hearing counsel for the respondent moved to suppress the evidence on the ground that the respondent's presence in the proceeding was obtained as a result of an unlawful arrest and search, and also that the evidence proving the deportability of this alien was obtained as a result of such unlawful arrest and search. The Trial

Judge denied the motion holding that respondent's testimony 341 U.S. 95 holds that for an arrest to be valid the law was not tainted by the unlawful arrest and search and in any event there had been a warrant outstanding (Form I-409. report believing that an officer had been arrested. The case of deserting crewman). He also held that under Section 287 (a)(1) of the Immigration and Nationality Act, an officer of the Immigration Service is empowered without warrant to arrest and interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. In addition he held that if there was any impropriety or illegality on the part of the police in detaining the respondent such action does not taint the deportation proceedings.

The Immigration Judge denied the exercise of voluntary departure and entered an order of deportation against the respondent directing deportation to Ecuador.

THE LAW

In the case at bar the police went to arrest the respondent as a result of having received an anonymous letter which accused the respondent of being illegal and threatening to kill a number of persons and having homicidal tendencies, carrying a knife and trafficking in narcotics. The law is clear that the information the police officer must act upon must be something more substantial than a casual rumor and something more substantial than a mere accusation. Spinti v. United States, 393 U.S. 410. Henry v. United States,

361 U.S. 98 holds that for an arrest to be valid the facts and circumstances known to an officer must warrant him in believing that an offense had been committed. The Court stated that this requirement must be strictly enforced to protect the citizen. In the case at bar even though the arrest and search subsequently disclosed that the alien had no authority to remain in the United States, a mere suspicion is not enough for an officer of the law to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that the citizen be subject to easy arrest. Henry v. United States, supra. In the case at bar the officers had no probable cause to arrest the respondent, and ~~a subsequent search can not be sustained as incident to a lawful arrest.~~ Thereafter when the respondent was turned over to the Immigration officers, the facts ascertained as a result of the initial illegal arrest could not subsequently justify the illegal arrest and search. The Judge should have granted the motion to suppress since the case against the respondent rested solely upon the evidence which should have been suppressed.

Pursuant to a recent decision of the United States Supreme Court in Condrado Almeida-Sanchez, petitioner, v. The United States, 93 Supreme Court 2535 (1973) the Court held that Section 287 of the Immigration and Nationality Act could

not justify a warrantless search without probable cause.

The Court stated that Section 287 does not declare a field day for the government to search. The Court insisted upon probable cause as a minimum requirement.

There was no independent evidence to justify reasonable suspicion. Terry v. Ohio, 398 U.S. 1, 88 Supreme Court 1869, 20 L. Ed. 2d 889 (1968) held that it intrudes upon constitutionally guaranteed rights if an arrest is based on nothing more substantial than inarticulate hunches. To hold otherwise would give the Immigration officer an impermissible opportunity to detain any foreign looking person, any place, any time, with no more than a hunch or surmise that he is illegally here. Cheung Tin Wong v. Immigration and Naturalization Service, 468 F. 2d. 1123, held that it would not be enough for an Immigration officer to question an individual simply because he looked to be of foreign descent.

At the moment the arrest was made the officers had acted upon information which was not proved sufficiently trustworthy to warrant a prudent man in believing that the person arrested had committed or was committing the act complained of. Draper v. U.S. (1959) 358 U.S. 307.

Since 1914 the Supreme Court has held that as a rule of constitutional law fruits of an unreasonable arrest,

On June 25, 1974. The telegraphic message from the District search and seizure must be suppressed. Weeks v. United States (1914) 232 U.S. 383. To hold that the nature of the deportation hearing or the evidence developed at the hearing could buttress probable cause has never been condoned by any Court. The findings of the Immigration Judge were contrary to these Supreme Court decisions. Miranda v. Arizona 384 U.S. 436.

Under the Fifth Amendment to the Constitution any admissions which the respondent made after being apprehended without being accorded the Miranda Warnings were inadmissible. Since the respondent was in custody at the time the officers questioned him, even admitting arguendo that he told the officers that he was an alien, his statements would not have been admissible since he had not been informed of his rights.

The Immigration Judge alleges that the Service was in possession of sufficient independent documentary evidence relating to this respondent prior to the alleged unlawful arrest of June 26, 1974 to establish the respondent's deportability, viz., Form I-409, Report of Deserting Crewman, received August 16, 1972. Telegraphic message from the District Director in Newark to the Central Office in Washington identifies the respondent by name. It is clear, however, from the evidence presented that the arrest of this alien was not made pursuant to this Warrant. In the files of the Immigration Service a warrant did exist which was issued prior

to June 26, 1974. The telegraphic message from the District Director was sent to the Central Office in Washington on August 29, 1972. The Immigration officers either did not arrest the respondent as a result of this warrant but instead as a result of the unlawful arrest by the Hempstead police which led them to the respondent. Only after the illegal arrest took place did the Immigration officers make the connection between the person arrested by the Hempstead police and the person for whom a warrant had been issued in 1972. Fourth Amendment., U.S. Const.; Art. 1, Sec. 12 of New York State Constitution.

It is basic to our idea of constitutional law that a warrant does not remain indefinitely valid. It is a general rule that officers of the government cannot stop or otherwise interfere with persons in this country as they move around or travel throughout the land. These officers entered the premises of the respondent without first giving him notice of their authority and purpose. This is in violation of his constitutional rights. Miller v. United States (1958) 357 U.S. 301.

Officers cannot arrest on the basis of mere suspicion without basing it upon information from a reliable informer or verifying some of the information by what the officers themselves see before arresting a subject. Draper v. United States (1959) 358 U.S. 307.

WHEREFORE, it is respectfully prayed that the de-

cision of the Immigration Judge be reversed and that the motion to suppress be sustained and the case dismissed, and for such other, further and different relief as may be just.

CARLOS ANTONIO CASTRO-CARRERA

CARLOS CASTRO and PEDRO CASTRO

Respondent.

Respectfully Submitted, 6 030 41

WILLIAM H. OLTARSH,
Attorney for Respondent.

THE FACTS

The alien was arrested about 11 o'clock in the evening of June 26th at his home. Immediately prior to his arrest he was sleeping and was not in the process of committing any crime or illegal act immediately prior to his arrest. The Hempstead police came to his door and asked him his name and he said his name was Carlos Castro and he was arrested. They gained entry into his apartment when he opened the door in response to their knock. Immediately after giving his name they took everything out of his pockets by directing him pursuant to their authority to give him everything in his pockets. Thereafter he was taken to the police station and at the police station searched him and then the police called Immigration and sent the alien respondent to the Immigration Service the

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Hon. Henry I. Millman		POSTMARK OR DATE
Immig. & Nat. Service		
STREET AND NO. Special Inquiry Section		
20 W. Broadway		
P.O., STATE AND ZIP CODE New York 10007		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

PS Form 3800 Nov. 1971 NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL (See other side) * GPO: 1970 O-307-488

September 6, 1974

Hon. Henry I. Millman,
Special Inquiry Section,
Immigration & Naturalization Service,
20 West Broadway,
New York, N.Y. 10007

In re: Carlos Antonio Castro-Cabrera
File No. A16 030 543

Dear Mr. Millman:

I received the transcript of testimony with your permission for me to file a brief on or before the 16th of September, 1974. I note that the anonymous letter which formed the basis for arresting the alien by the Hempstead and Westbury Police Department and which was referred to in the transcript was not annexed to the transcript as an exhibit and/or a copy of the same. Since this is an essential part of the case and forms a necessary part of the defense of the alien I wish to request you to forward me a copy of this letter. After receipt by me of this letter I would then appreciate your according me an additional ten (10) days to submit the brief inasmuch as the questions raised here are very complicated. I refer you to the case of Spinelli v. U.S., 393 U.S. 410 which holds that the information a police officer acts upon must be something more substantial than a casual rumor. Whether or not there was enough evidence against this alien other than a casual rumor remains to be determined from this anonymous letter and accordingly since it is indispensable as part of the case I am requesting that you send a copy of this letter to me.

REGISTERED NO.	SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
CERTIFIED NO. 684590	
INSURED NO.	
DATE DELIVERED SEP 9 1974	
SIGNATURE OF ADDRESSEE'S AGENT, IF ANY SEP 9 11 09 AM '74 IMM. & NAT. SERVICE N.Y.C. MAIL UNIT	
SHOW WHERE DELIVERED (Only if requested, and include ZIP Code) <i>[Signature]</i>	

In courtesy in this matter I am
yours,
H. Oltarsh

June 20, 1974

U.S. Immigration & Naturalization Service
20 West Broadway
New York, New York 10007

Att: Abe Goodman,
13th Floor Investigations

Dear Sir:

I am writing about an individual who resides in Long Island, who is an illegal alien, uses two names, threatens to kill a number of persons, has homicidal tendencies, carries a knife, and is known to traffic in narcotics.

This man is believed to be dangerous and should be deported.

Description:

CARLOS ANTONIO CASTRO CABRERA
10 Moore Avenue, Hempstead, New York

Employed under alias (PEDRO GOYA) at
International Lamination
Cantiage Road, Westbury, N.Y.

Drives Chevrolet, Plate # 290 LIE N.Y.

Ecuadoran national approx. 25 years of age

Please take appropriate action as you deem warranted.

cc: Chief of Police,
Hempstead, New York

Chief of Police,
Westbury, New York

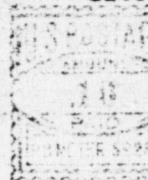
EXHIBIT

2

9/15
JUL 29/74

STATE OF NEW YORK
DEPARTMENT OF LABOR
60 CENTRE STREET
NEW YORK, N. Y. 10013

GE-70



U.S. Immigration & Naturalization Service
20 West Broadway
New York, N.Y. 10007

Att: Abe Goodman
Investigations, 13th Floor

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A16 030 543 - New York

AUG 6 - 1974

In the Matter of:

CARLOS ANTONIO CASTRO-CABRERA) IN DEPORTATION PROCEEDINGS
a.k.a.
CARLOS CABRERA and PEDRO GOYA)

- Respondent -)

CHARGE: I & N Act, Section 241(a)(2) - Remained longer-nonimmigrant crewman.

APPLICATION: Termination of proceedings, or voluntary departure.

In Behalf of Respondent:

David Oltarsh, Esq.
225 Broadway
New York, N.Y. 10007

In Behalf of Service:

John E. Spear, Esq.
Trial Attorney
New York, N.Y. 10007

DECISION OF THE IMMIGRATION JUDGE

The Service instituted these proceedings by an Order to Show Cause dated June 27, 1974, alleging that the respondent is a native and citizen of Ecuador who entered the United States at Tampa, Florida on or about July 26, 1972, at which time he was admitted as a nonimmigrant crewman authorized to remain in the United States for the period of time the vessel remained in port, not to exceed 29 days, and that he remained in the United States thereafter without authority. He is

charged with being subject to deportation under Section 241(a)(2) of the Immigration and Nationality Act in that after admission as a nonimmigrant under Section 101(a)(15) of said act, he has remained in the United States for a longer time than permitted.

The respondent has identified himself as Carlos Antonio Castro Cabrera and acknowledged service of a copy of the Order to Show Cause. His attorney in his behalf has declined to admit the allegations of fact and charge in the Order to Show Cause, urging that the proceedings have been instituted as a result of an unlawful arrest and illegal search and seizure of respondent, and that the evidence presented to sustain deportability should be suppressed.

Concerning his arrest, the respondent has testified substantially as follows; about 11 o'clock in the evening of June 26, 1974 he was arrested by the police in Hempstead and taken to the police station where he was questioned. During the course of interrogation he was asked what country he came from and he replied that he had come from Ecuador and had worked on a boat. He was asked whether he had a green card which he understood to refer to a card issued to lawful permanent residents and he replied that he did not have any. The police called the Immigration Service and an immigration officer appeared at the station and took him to Minsk where he remained until the following morning when he was taken to the Immigration Office at 20 West Broad-

way. While at the immigration office his Form I-95 (crewman's landing permit) was taken from him. He had never committed any crimes and was not charged with any crimes by the Hempstead police before being turned over to the Immigration Service.

An investigator of the Immigration Service testified that on June 26, 1974 he was notified by his supervisor to go to the Hempstead police station where an illegal alien was being held. After he arrived there he spoke to the respondent in Spanish and placed him under arrest, and took the respondent to the Mineola detention center where respondent was kept overnight and the following day he took him to the Immigration office. The investigator testified that the Hempstead police had not arrested the respondent under any instruction from the Immigration Service. A formal warrant for respondent's arrest was issued by the Service on June 27, 1974.

From the evidence of record it appears that the Hempstead police took respondent into custody on the basis of an anonymous letter of June 20, 1974 (Exhibit 7) the original of which was sent to the Immigration Service and copies to the Chief of Police at Hempstead, New York and Westbury, New York. This letter states as follows:

"Dear Sir: I am writing about an individual who resides in Long Island, who is an illegal alien, uses two names, threatens to kill a number of persons, has homicidal tendencies, carries a knife, and

is known to traffic in narcotics. This man is believed to be dangerous and should be deported. Description: CARLOS ANTONIO CASTRO CABRERA 10 Moore Avenue, Hempstead, New York. Employed under alias (PEDRO GOYA) at International Lamination Cantiage Road, Westbury, N.Y. Drives Chevrolet, Plate #290 LIE N.Y. Ecuadoran national approx. 25 years of age. Please take appropriate action as you deem warranted."

The investigator testified that this letter was in possession of the Immigration Service several days before June 26.

During the deportation hearing the respondent acknowledged that he is a native and citizen of Ecuador. Although counsel objected to such interrogation on the ground that respondent's presence in the proceeding was obtained as a result of an unlawful arrest and search, that objection is untenable, since respondent's testimony, given after the institution of deportation proceedings and the issuance of a formal warrant of arrest is not considered tainted. Klingas v. INS, 361 F. 2d 529 (CA, D.C. 1966); Huerta-Cabrera v. INS, 466 F. 2d 759 (7 Cir., 1972).

In any event, the trial attorney has presented sufficient independent documentary evidence, all of which admittedly relates to the respondent and was in possession of the Service prior to the alleged unlawful arrest of June 26, 1974 to establish respondent's deportability. One of these documents, Form I-409, Report of Deserting

Crewman, received August 16, 1972 indicates that Antonio Carlos Cabrera a native and citizen of Ecuador, holder of passport #090637, was a member of the crew of the M/V Banana Core; that he was inspected at Tampa on July 26, 1972 and deserted that vessel at Newark on August 13, 1972. Additionally a report of investigation dated February 23, 1973 refers to the receipt of the Report of Deserting Crewman and corroborates the information contained therein relating to respondent, Form I-95B, the Service copy of the Crewman's Landing Permit, indicates that respondent was born in Ecuador on November 14, 1944 and was a crewman on the M/V Banana Core. A telegraphic message from the District Director in Newark to the Central Office in Washington sent on August 29, 1972 identifies the respondent by name, date of birth, citizenship, and passport number among the individuals who deserted the M/V Banana Core at Port Newark, New Jersey on August 13, 1972. The respondent's Ecuadorian passport itself, which was retained by the captain of the vessel on which respondent had arrived, and turned over to the Immigration Service, was also presented at the instant hearing.

Under Section 287(a)(1) of the Immigration and Nationality Act, an officer of the Immigration Service is empowered without warrant to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. Under Section 287(a)(2),

an officer may arrest any alien in the United States if he has reason to believe the alien so arrested is in the United States in violation of any law or regulation regulating the admission, exclusion or expulsion of an alien who is likely to escape before a warrant can be obtained for his arrest.

The Service investigator was justified in arresting the respondent without a warrant when he took the respondent into custody at the police station, after questioning him there. Since the Service was aware of the respondent's unlawful presence in the United States by the documents in its possession showing he was a deserting crewman and as the respondent's interrogation at the police station indicated that he was an alien without a claim to lawful permanent residence in this country, the investigator could reasonably assume that respondent was likely to abscond before a warrant of arrest could be obtained. If there was any impropriety or illegality on the part of the police in detaining the respondent, such action does not taint the deportation proceeding. Matter of D-M 6 I & N Dec. 726; Guzman-Flores v. INS (CA 7, May 28, 1974). The letter dated June 20, 1974 giving specific information concerning the identity of the respondent and stating that he is an illegal alien, constituted sufficient basis for respondent's arrest by the Immigration officer without a warrant. Matter of Perez-Lopez Int. Dec. 2132 (B.I.A., 1972).

but
not
to
this
alien

In any event, even if there was some irregularity in connection

with respondent's arrest by the Immigration Officer and on this record it does not appear that there was any such irregularity-it would not affect the validity of the instant deportation proceeding. Bilakumsky v. Tol 263 U.S. 149 (1923); Ylpidis v. Ansell 262 F.2d., 398 (7 Cir., 1959); U.S. v. Lee Han, 60 F.2d., 124 (2nd Cert., 1932); Green v. U.S. 460 F.2d. 317 (5 Cir, 1972); U.S. v. Villalla, 459 F.2d., 1028 (9 Cir. 1972). In this connection, the Form I-95A, Crewman's Landing Permit taken from the respondent, is not being considered on the issue of deportability. There is sufficient untainted evidence presented by the trial attorney which was in possession of the Service to establish the truth of the allegations and the respondent's deportability as charged in the Order to Show Cause. Consequently there is no basis for respondent's motion to suppress.

Upon consideration of the entire record it is concluded that the deportability as charged in the Order to Show Cause has been established by clear, convincing and unequivocal untainted proof.

Respondent has applied for the privilege of voluntary departure. He has no close family ties in the United States. According to his testimony his entry into this country on July 26, 1972 was his first and only entry. He has acknowledged using a social security card in the name PEDRO GOYA to work in this country. Although he has pro-

feared ignorance as to the impropriety of assuming an alias and employment in the United States, his testimony is not convincing. Considering the fact that the respondent deserted the vessel on which he arrived as a crewman on his first entry into this country, and obtained a social security card and employment here under an assumed name he does not deserve the exercise of discretion to grant voluntary departure. Consequently an order of deportation will be entered against him. He has designated Ecuador as the country to which he prefers to be deported. Deportation will therefore be directed to that country.

ORDER: IT IS ORDERED that the respondent be deported from the United States to Ecuador on the charge contained in the Order to Show Cause.

Henry T. Millman

HENRY T. MILLMAN
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 16 030 543

CARLOS ANTONIO-CASTRO CABRERA

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Henry I. Millman, Immigration Judge

Date: July 25, 1974 Place: 20 West Broadway

Transcribed by Terry Lee Jones Recorded by Dictab

Official Interpreter Ana Rosner, (U.S.I.N.S.)

Language Spanish

APPEARANCES:

For the Service:

John K. Speer, Esq.

Trial Attorney

Station

For the Respondent:

David E. Oltarah, Esq.

225 Broadway

New York, N.Y.

1 **IMMIGRATION JUDGE TO RESPONDENT:** (Through official interpreter)

2 **Q** State your full name?

3 **A** Carlos Antonio Castro-Cabrera.

4 **Q** Now I have before ^{me} an Order to Show Cause and a notice of hearing, issued
5 by an immigration officer on June 27, 1974 charging that a person of your
6 name is subject to deportation. Did you get a copy of this paper?

7 **A** Yes.

8 **Q** This hearing is being held to decide what is to be done with you under
9 the immigration laws of the United States. Do you understand?

10 **A** Yes.

11 **Q** At this hearing you are being represented by Mr. Oltarah as your lawyer?

12 **A** Yes.

13 **IMMIGRATION JUDGE TO COUNSEL:**

14 **Q** Counsel are you ready to proceed with the hearing now?

15 **A** Yes your honor.

16 **IMMIGRATION JUDGE TO TRIAL ATTORNEY:**

17 **Q** Mr. Speer are you?

18 **A** Ready.

19 **Q** Mr. Castro will you stand up please and raise your right hand?
20 Do you solemnly swear that all the statements that you are about to make in
21 this proceeding will be the truth, the whole truth, and nothing but the truth
22 as help you God?

23 **A** Yes.

24 **Q** Just be seated. I am now entering the Order to Show Cause into evidence
25 as Exhibit 1. I assume there is no objection counsel?

26 **A** (Counsel) No objection.

A16 030 543

- 1 -

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1 Q In behalf of the respondent are you willing to waive the reading of the
2 five allegations of fact and the charge in the Order to Show Cause?

3 A Yes I waive the reading.

4 Q In his behalf are you willing to admit the truth of those five allegations?

5 A No I'm not.

6 Q Are you ready and willing to admit the truth of any of the allegations
7 in his behalf?

8 A Only his name.

9 Q And I assume then that you are not willing and prepared to concede his
10 deportability as charged. Is that correct?

11 A That's correct your honor.

12 Q Well ... I assume ... Yes, counsel.

13 A Before entering into any interrogation of the respondent in connection
14 with this hearing I would move to have the right to question the respondent
15 in connection with the claim on the behalf of the respondent that any infor-
16 mation regarding his status, what country he's from, or his deportability be
17 suppressed on the grounds that any information concerning this respondent was
18 obtained as a result of arrest without probable cause and an illegal search
19 and seizure. Your honor I will note that I have delivered or handed to your
20 honor an original document setting forth in writing that claim a copy which
21 has been given to the attorney for the government. So that I would at this
22 time merely move for the right to preliminarily question the respondent as to
23 the basis of this claim of suppression of any identification or deportability.
24 As the-on the grounds rather that the whole obtention of this information was
25 as a result as I just stated of an arrest without probable cause and illegal
26 search and seizure.

1 Q Well counsel I consider that position premature at this time. I would like
2 to know first, have the record reflect just what evidence the government has
3 on the issue of deportability and then of course you may...

4 A Move to suppress it.

5 Q Yes you may move to suppress it at that point if it becomes an issue as
6 to the manner of which it was obtained. At this point the government not having
7 proceeded with its presentation of its evidence I consider your motion premature.

8 IMMIGRATION JUDGE TO RESPONDENT:

9 Q Mr. Castro the Order to Show Cause in your case charges that you are in
10 this country in violation of law because after your admission as a crewman
11 you have remained for a longer time than allowed. Do you understand that?

12 A Yes.

13 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

14 Q All right Mr. Speer in light of counsel's position would you care to
15 proceed?

16 TRIAL ATTORNEY TO IMMIGRATION JUDGE:

17 Q The government is ready to proceed preliminarily with questioning of the
18 respondent, if it may reserve the right to question further at a later time.

19 Question preliminarily.

20 IMMIGRATION JUDGE: All right go ahead. You may proceed.

21 TRIAL ATTORNEY TO RESPONDENT:

22 Q Mr. Castro Cabrera of what country are you a citizen?

23 COUNSEL: Objection.

24 IMMIGRATION JUDGE: On what ground.

25 COUNSEL: Well I'll object to the question on the ground that the whole pre-
26 sence of Mr. Castro here in this proceeding is as a result of an unlawful

A16 030 543

- 3 -

7-26-71

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1 arrest and illegal search and seizure. I will permit the respondent to
2 answer the question. I don't want it to appear as if I am or he is assenting
3 or consenting to the release of this information. With the statement that
4 I will later move to suppress this information, I have to note my objection.
5 Q All right. In other words you are making a formal objection relating to
6 your basic position that information was obtained as a result of an unlawful

7 ***
8 A And a illegal search and seizure. I will permit the respondent to answer
9 with my noted objection.

10 Q All right.

11 TRIAL ATTORNEY TO RESPONDENT:

12 Q Have at anytime have you been a citizen or national of the United States?

13 COUNSEL: I'll object again and perhaps to not clutter the record as I note
14 that I would object to any further questions on the same basis.

15 IMMIGRATION JUDGE: In other words you have a standing objection on the same
16 basis that you originally mentioned to these questions.

17 A Right. But I will permit the respondent to answer over these objections.

18 IMMIGRATION JUDGE: All right.

19 TRIAL ATTORNEY TO RESPONDENT:

20 Q Where were you born?

21 A Guayaquil, Ecuador.

22 Q And what country are you now a citizen?

23 A I am an Ecuadorian.

24 Q I have here before me Form 95, "Crewman's Landing Permit. I show it to
25 counsel. If there is no objection I'll offer that into evidence.

26 COUNSEL: I have no objection other than the same objection as to its admission.

A16 030 543

- 4 -

7.25.74

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1 bility as I stated in the beginning of your interrogation.

2 TRIAL ATTORNEY: All right then this is a Form I-95A, Crewman's Landing
3 Permit issued in the name Carlos Antonio Cabrera and showing date of entry
4 into the United States, July 26, 1972 at "TAM" apparently from Tampa, Florida.

5 IMMIGRATION JUDGE: This form will be marked Exhibit 2.

6 TRIAL ATTORNEY TO RESPONDENT:

7 Q Do you have any documents Mr. Castro Cabrera to indicate your right to stay
8 in the United States beyond 29 days past July 26, 1972?

9 A There are 2 papers that were given to me for safe conduct from the ship.

10 Q Mr. Castro Cabrera are you ready-do you have funds with which to leave
11 the United States in time.

12 A Yes.

13 IMMIGRATION JUDGE TO COUNSEL:

14 Q Counsel you previously raised an objection-a series of objections to a
15 line of inquiry. Does that objection pertain to the question which was just
16 asked?

17 A No it does not your honor. I believe that the line on which I have objected
18 has now been concluded. If it is not I will renew my objection.

19 Q All right I wanted to clarify the record. All right.

20 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

21 Q Will you repeat the last question please?

22 TRIAL ATTORNEY TO RESPONDENT:

23 Q Do you have funds in the United States. How much money do you have in the
24 United States?

25 A About \$350.

26 Q Is that in cash or in the bank?

1 A I don't have the money in the bank.
2 Q Have you ever been arrested for other than immigration offense?
3 A Never.
4 Q I would like to go off the record.
5 IMMIGRATION JUDGE: Yes go ahead. Off the record. On the record.
6 TRIAL ATTORNEY TO RESPONDENT:
7 Q Have you ever been arrested by the police in any place?
8 A The first time in America.
9 Q You mean you were arrested by the police in America?
10 A Yes the United States in Hempstead. The police arrested me and sent me
11 to immigration.
12 Q And when was that, what was the approximate date?
13 A Between the 26th and 25th of June of this year.
14 Q What was the reason for the arrest by the police in Hempstead?
15 A I had a problem with a coworker and then he reported me.
16 Q What is the name of the coworker?
17 A I don't know because there were two. I don't know which one of them.
18 Q What are both of their names?
19 A One is Pedro Quintanilla. The other, I only know him by the name of
20 Angelo but he doesn't work there anymore.
21 Q Where is this place of employment?
22 A International Lamination, in Westbury.
23 Q What type of work do you do there?
24 A Mechanical machine operator.
25 Q And how long have you been working there?
26 A Six months.
Q What is your salary there?

1 A \$85 a week.

2 Q Have you ever been a member of the communist party?

3 A No.

4 Q Do you have any family in the United States?

5 A Just friends.

6 Q Do you have any family outside of the United States?

7 A Ecuador.

8 Q What is your family in Ecuador?

9 A My mother, my sisters and my brothers.

10 Q I have no further questions at this time.

11 IMMIGRATION JUDGE TO COUNSEL:

12 Q Counsel do you wish to question the respondent?

13 A Yes your honor I do.

14 COUNSEL TO RESPONDENT:

15 Q Mr. Castro on or about June 26, 1974 were you arrested?

16 A Yes.

17 Q About what time of day was it if you recall that you were arrested?

18 A 11 o'clock.

19 Q In the evening?

20 A Yes.

21 Q And where were you and what were you doing immediately prior to this
22 arrest?

23 A I was sleeping.

24 Q And where did this take place?

25 A My house.

26 Q Where is that?

A16 030 543

- 7 -

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1 A Hempstead. I think they brought me there. That before, didn't he.

2 Q Had you committed or were you in the process of committing any crimes or

3 illegal act immediately prior to the arrest?

4 A No.

5 Q Can you tell us the circumstances immediately prior to and at the time

6 of this arrest at your home at about 11p.m. that evening?

7 A I was sleeping in my pajamas.

8 Q Go ahead?

9 A The police came in and they asked me my name I said my name is Carlos

10 Castro and I was arrested.

11 Q So do I understand that immediately upon giving your name they came in

12 and arrested you right after that?

13 A Yes.

14 Q How did they get into your apartment or your room?

15 A I went to the door and they said they were the police.

16 Q And what did you do when you heard that?

17 A I opened the door and they just came in.

18 Q Now as you said after giving your name and they arrested you what did

19 they do to you after that if anything?

20 A Took everything out of my pocket.

21 Q Did you hand it to them voluntarily or did they take it?

22 A They asked me what you have there and I took out.

23 Q They directed you to take it out?

24 IMMIGRATION JUDGE: Counsel, don't lead.

25 Q Did you offer the contents of your pockets of your own accord or did they

26 ask you for it.

1 TRIAL ATTORNEY: I think that he might have answered that before, didn't he.

2 COUNSEL: All right.

3 Q But this is after you stated that you were arrested? Is that correct.

4 A They took me to the police and then they asked me for what I have in my
5 pockets.

6 Q Do I understand that they asked you for what you had in your pocket after
7 they had taken you down to some police station or something, or did that take
8 place in the room?

9 A In my room they looked at my room and my wallet and they saw my name and
10 the police they searched me and they asked for my green card.

11 IMMIGRATION JUDGE: You mean in the police station?

12 A Yes.

13 Q Now Mr. Castro after they came into your room did they very soon after
14 that or immediately thereafter take you out of the room?

15 A Right away.

16 TRIAL ATTORNEY: I want to ask him more along the line.

17 IMMIGRATION JUDGE: Yes, Mr. Speer.

18 TRIAL ATTORNEY: I would like to object and ask him to rephrase the question to
19 avoid leading questions.

20 IMMIGRATION JUDGE TO COUNSEL: Counsel will you ask the question in a more direct
21 form.

22 COUNSEL: I will.

23 Q COUNSEL TO RESPONDENT:

24 Q Mr. Castro after the police officers entered your room and you identified
25 yourself what did they do thereafter?

26 A They took^{me} to the police station.

416 030 543

- 9 -

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32

1 Q Well would you answer? ~~that~~ as within a very short time or a long time
2 or how fast did that happen?

3 A They asked me what was my name and I told them my name and they told me
4 to get dressed, put on your shoes...

5 Q Did you feel, Mr. Castro, free at that time to leave?

6 A What?

7 Q Did you feel that you had a right to walk out of the room at that time or
8 did you feel at that point you were detained and under arrest?

9 TRIAL ATTORNEY: I'll object to that because it hasn't been established if there
10 was any arrest-at what point the arrest or pronouncement of arrest was made by
11 the arresting officer.

12 COUNSEL: Well that's what I'm asking these questions for. If I may ask it
13 again...

14 IMMIGRATION JUDGE: Rephrase the question counsel.

15 COUNSEL TO RESPONDENT:

16 Q Did you feel Mr. Castro when these police officers directed you to get
17 dressed and to come with them that you were free to leave or do otherwise?

18 A I considered that I had not done anything wrong and I told I didn't know.

19 Q That is not an exact answer to my question. Did you feel Mr. Castro that
20 you could have walked out of that room without obeying the directions of the
21 police officers.

22 A Well there were three police officers. One was by the door and one was
23 on one side and the other one was on the other side and they got me.

24 Q Where did they take you. After you and they, together all of you left
25 your room in Hempstead.

26 A To police station.

416-030-543

- 10 -

7.29.74

33

1 Q Did any of the police officers up until that time tell you that they were
2 charging you with any crime of any kind?

3 A I don't know why they took me.

4 Q And how long thereafter did you remain at the police station or precinct?

5 A The police searched me and they took an address I had, and a bracelet and
6 my watch and everything, a ring and everything I had in my pocket they took
7 everything inside an envelope and they called immigration and the immigration
8 came and took me.

9 Q When did immigration come and take you in relation to the time of the
10 arrest around 11 o'clock that evening?

11 A They took me from the police and they spoke in Spanish.

12 IMMIGRATION JUDGE: Will you clarify that answer please.

13 A After the police searched me and they saw that I didn't have anything wrong
14 with me they called immigration and sent me over and they came about a half hour
15 later. The immigration came a half hour later.

16 Q Did the wallet and other papers that you had in your pocket that you say
17 that the police took at the precinct, or station house--did that contain any
18 identification documents such as driver's license or other papers?

19 A Driver's license from Ecuador.

20 Q Ecuador?

21 A From Ecuador and from the United States.

22 Q Now what happened next with regard to Immigration Service after the police
23 called the Immigration Service on the telephone?

24 A I was taken to Mineola and I slept in Mineola until the following day.

25 Q And what happened then?

26 A 9 o'clock in the morning came an immigration officer. He brought me here.

A16 030 543

- 11 -

7.25.74

34

1 Q Now from the time that the police officers came to your room in Hempstead
2 until the time you arrived here at 20 West Broadway were you continuously in the
3 custody of either the police officers or the immigration officers?

4 A Yes.

5 Q Now from the time that you were taken into custody by the Immigration
6 Officers did anything happen with regards to any documents, papers or other
7 personal items that you had on your person.

8 TRIAL ATTORNEY: Objection as too vague. Could you phrase it a little more
9 explicitly?

10 Q Did anything occur after you left the police station with regard to any
11 other search or taking of any documents from you by the Immigration Service
12 officers.

13 A No I told them I had a lawyer and they told me that it was night and I
14 should call the lawyer the following day.

15 Q Perhaps he didn't understand my question. Did anything take place in
16 connection with the immigration officers to your knowledge where they obtained
17 your name or documents or anything. Do you have any knowledge of that?
18 Do you have any knowledge of that?

19 A No they didn't tell me anything. The police called immigration.

20 Q Well do you know Mr. Castro, whether the police turned over any documents
21 that they took from you to the immigration?

22 A I don't know.

23 Q Well did you see the exhibit on behalf of the government, number 2 I
24 believe it was. Which was your I-95 card, which you identified. Did you see
25 that before? This here. (Counsel shows form to respondent)/

26 A It is mine.

1 Q Can you tell us how the Immigration Service got possession of that parti-
2 cular document if you know?

3 A The Immigration searched me here and took it.

4 Q Well that's what I asked you before Mr. Castro. And when did this take
5 place. Not until you arrived here at 20 West Broadway?

6 A Yes here, they searched me here.

7 Q When they searched you did they take anything else to your knowledge from
8 your person other than that slip of paper?

9 A All the papers I had in my pocket.

10 Q They took?

11 A Yes sir here. They told me what do you have in my pocket, your pocket.
12 I took my wallet and I gave it to them and they looked at everything that was
13 inside.

14 Q And this is while you were in custody here at 20 West Broadway?

15 A Yes.

16 Q Now Mr. Castro from the time that these police officers came into your
17 room at Hempstead until the time that you were served with this Order to Show
18 Cause, the government's Exhibit 1, which you have acknowledged receipt of, did
19 anybody exhibit to you at anytime a warrant for your arrest?

20 A Nobody.

21 Q And have you ever been charged with any crime whatsoever by the police in
22 Hempstead subsequent to that incident?

23 A Never.

24 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

25 Q Mr. Speer do you wish to question the respondent?

26 A Yes.

116 030 543

- 13 -

7.23.74

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1 TRIAL ATTORNEY TO RESPONDENT:

2 Q Mr. Castro have you ever used the name Pedro Goya?

3 IMMIGRATION JUDGE: Spell that please.

4 TRIAL ATTORNEY: Goya.

5 A Yes.

6 Q Why?

7 A A friend of mine got a social security for me under that name.

8 Q And for how long-when did you first use the name?

9 A About one year and a half ago. Because I didn't work up until that time
10 I didn't work. I was out of work I couldn't find a job.

11 Q That name is used on the social security card. And it was used in employ-
12 ment since a year and a half ago?

13 A Yes. I had an accident in the factory.

14 Q How did the accident happen?

15 A My finger was caught in the machine.

16 Q That was at International Lamination?

17 A Yes.

18 Q Where did you work before International Lamination?

19 A I was out of work. I was staying with an aunt of a friend of mine.

20 Q But I believe you said previously that you worked for International
21 Lamination for six months. But now you have been working for a year and a
22 half back from today?

23 A I used that name on the social security card but I was not working.

24 Q Did you ever threaten to kill anybody?

25 A Nobody.

26 Q Since you've been in the United States have you ever carried a knife

116 030 543

- 14 -

7.25.74

37

on your person?

1 A No never.

2 Q In the United States have you ever trafficked in narcotics. In other
3 words have you transported narcotics?

4 A I don't know about that.

5 Q Have you ever possessed narcotics?

6 A Never.

7 Q Was it announced to you by the Hampstead police that you were under arrest
8 when they were talking with you?

9 A Announced.

10 Q At what stage were you told, at what point. At any time?

11 A No.

12 Q You have mentioned before that you believe your apprehension by the police
13 grew out of a quarrel between a coworker and you. Would you explain further how
14 you believe the arrest may have come from a quarrel?

15 A Well I had some problems with my friend at work on account of a woman
16 and then we didn't talk to each other and after that the police came to my
17 house.

18 Q How do you know they came to your house because of that?

19 A Because in town nobody knew that I worked at the factory under the name
20 of Pedro Goya. He was the only one who knew.

21 Q I see. What was the woman's name?

Rosa

22 A /I don't know her second name.

23 Q What did you gather was the reason for your apprehension by the police?

24 A I didn't know anything. I didn't have any idea. The police just came
25 and asked me your name is Carlos--it is Pedro Goya? I said no my name is
26 Carlos Castro and they told me to get dressed and come with them.

1 Q In other words you believed that your apprehension by the police had
2 something to do with your relationship with a woman named Rose?

3 A Yes because the police, after the police went through my papers they
4 told me you have some problem, where is your green card, and I said I have
5 no green card.

6 Q Why did they asked you that. Why would you think they asked you the
7 question about a green card?

8 A Because they couldn't find anything else. No problem with me, so they
9 asked me for my green card.

10 Q I have here an Ecuadorian passport of a Carlos Antonio Castro Cabrera.
11 If there's no objection I'll offer that into evidence.

12 COUNSEL: Well I have no objection if he look at it and says that it is his.
13 Wait a second just a moment. When I say that I have no objection except the
14 one for suppression on the ground that it was obtained from him illegally on
15 the basis of an unlawful arrest.

16 IMMIGRATION JUDGE: All right at this point you are asserting merely that objec-
17 tion with reference to this specific offer, is that right?

18 A That's right.

19 Q I'll take it subject to the objection noted. Now specifically, what infor-
20 mation from this passport are you requesting to have noted, subject of course
21 to counsel's objection.

22 TRIAL ATTORNEY: The fact that the passport states the name of the applicant,
23 Carlos Antonio Castro Cabrera, an Ecuadorian by birth, and native of Ecuador
24 and...

25 IMMIGRATION JUDGE: Oh all right. I'll note that the passport bears number
26 090637 and was issued in the name of Carlos Antonio Castro Cabrera.

A16 030 543

- 16 -

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39

1 On December 15, 1969 showing the subject's place of birth as Ecuador.

2 TRIAL ATTORNEY TO RESPONDENT:

3 Q Mr. Castro if you know, how did this passport come in the hands of the
4 Immigration Service?

5 A I don't know. The captain of the boat where I was had the passport.

6 Q In other words the passport is from the hands of your ship captain?

7 A Yes.

8 Q In other words you have no knowledge that this came in the hands of the
9 Service as a result of any arrest or search or seizure?

10 A I don't know anything about the passport. It stayed on the boat.

11 TRIAL ATTORNEY: I would like to ask for a brief adjournment at this time
12 to consult with the chief trial attorney.

13 IMMIGRATION JUDGE: All right I will grant the request for a recess.

14 Hearing resumed. Are you ready to proceed now Mr. Spear?

15 A Yes.

16 Q Is there anything further you wish to develop or present?

17 A Not at this point.

18 COUNSEL: I have a couple of questions.

19 COUNSEL TO RESPONDENT:

20 Q Mr. Castro just so that I understand clearly and the record reflects
21 very clearly this passport that was exhibited to you, you testified was not
22 on your person nor was it taken by either the police or the Immigration Service,
23 at or shortly after the date of this arrest in June of this year. Is that
24 right?

25 A When I left home they didn't give my passport to me. They don't do that
26 they only give you the legal paper-the safe conduct pass to come ashore.

1 The passport I gave to the captain in Panama where I took the boat.

2 Q And it is the last you saw of that passport at that time?

3 A The last time was in Panama when I took the boat in Panama.

4 Q I see.

5 A I never saw it again.

6 Q Now you testified that that paper-white paper which you called a Safe
7 Conduct paper and your driver's license...

8 IMMIGRATION JUDGE: Counsel will you start that question.

9 Q Mr. Castro in addition to the white paper which you exhibited previously,
10 the government's Exhibit 2, and in addition to the two driver's licenses which
11 you mentioned, the one from Ecuador and the one from the United States, all of
12 which you said was taken from you by the Immigration Service in 20 West Broad-
13 way, was there anything else taken from you with your name or address of your
14 identification on it?

15 A Everything I have.

16 Q Well to your knowledge Mr. Castro did any other papers or documents in
17 your possession at that time when they were taken from you at 20 West Broad-
18 way have information about your place of birth, your immigration status or
19 other information regarding your status in the United States?

20 A This card, this card that shows I was on the vessel.

21 Q And is this card among the papers that was taken from you at 20 West
22 Broadway?

23 A They took everything.

24 Q Now Mr. Castro going back to the time when the police first entered your
25 room in Hempstead did they ever actually tell you why they came and knocked
26 at your door at 11 o'clock at night in your apartment?

A No never. They just told me, is your name Pedro Goya. I said no, my

A16 030 453

1 name is Castro, Carlos Castro and they told me to put on your shoes, get dressed
2 and come along.

3 Q And you said there were three policeman right?

4 A Yes.

5 Q And when they told you to get dressed and come with them do you recall
6 whether they had guns or night sticks or any other equipment such as that?

7 A They were carrying revolvers in their pockets.

8 Q All three of them?

9 A I only saw two.

10 COUNSEL: I have no further questions.

11 IMMIGRATION JUDGE: Mr. Spear.

12 A I have only one question.

13 TRIAL ATTORNEY TO RESPONDENT:

14 Q When the police came to your room in Long Island could you draw but one
15 conclusion from the first word they uttered that it must have resulted from
16 a quarrel with your coworker?

17 A Yes I knew that I didn't have any problem with the police when they knocked
18 at the door and they said they were the police and I opened the door.

19 Q And your conclusion was when they asked whether you were Pedro Goya, that
20 it must have been your coworker who had a grudge against you?

21 A Yes sir it had to be them, because where I live in the village nobody knew
22 about the name I used.

23 TRIAL ATTORNEY TO IMMIGRATION JUDGE: Off the record.

24 IMMIGRATION JUDGE: Mr. Spear is there anything else on this issue of deporta-
25 bility?

26 A No your honor.

1 IMMIGRATION JUDGE TO COUNSEL:

2 Q Counsel do you have anything further on the issue of deportability?

3 A No further testimony no.

4 Q Well I would like to ask the respondent a question or two?

5 IMMIGRATION JUDGE TO RESPONDENT:

6 Q When you were questioned by the police at your home and also the police
7 station what language was used?

8 A English.

9 Q Do you speak and understand English?

10 A The son of the lady where I lived speaks English.

11 Q Well how were you questioned?

12 A They searched me they didn't talk to me, one of them spoke a little
13 Spanish.

14 Q Well when they asked what your name, was whether you were Pedro Goya, in
15 what language was that communicated?

16 A They asked me in Spanish-are you named Pedro Goya?

17 Q Would you say in your communication with the police and also the immigra-
18 tion officers when they took you into custody that it was apparent that you
19 had little, if any knowledge or ability to speak English?

20 A Very little but the immigration officer spoke Spanish.

21 Q And was it apparent to them that the language you were familiar with-that
22 you spoke was Spanish?

23 A Yes. From which country I was and I came from Ecuador.

24 Q Who asked you that?

25 A The police, I mean immigration both immigration and the police.

26 Q At what point from the time you were first questioned by the police until

A16 C090543

1 you were brought to this building by immigration were you asked from which
2 country you came?

3 A The police in Hempstead asked me and the Immigration here asked me.

4 Q Well did they ask you that before or after they asked you about whether
5 you had a green card?

6 A Before they asked me if I have a green card, they asked me where do you
7 come from.

8 IMMIGRATION JUDGE TO COUNSEL:

9 Q All right. Now counsel is there anything further.

10 A Not at the moment. Yes I do have a question.

11 COUNSEL TO RESPONDENT:

12 Q Mr. Castro after the police officers came into your room in Hempstead and
13 found out that your name was Carlos Castro and directed or told you to come
14 with them and go out of the room at any time after that did they advise you of
15 your right to remain silent, that anything you might say can be used against
16 you?

17 A If my name was Pedro Goya, was my name Carlos.

18 Q I know that but then you testified that they told you to get dressed come
19 with them and then they took you out. Is that right?

20 A Yes.

21 Q Now you just testified in response to some questions by Judge Hillman,
22 that they asked you what country you were from and you testified you were
23 from Ecuador. Is that right?

24 A I was from Ecuador and I worked on a boat.

25 Q All right now. What I am asking you is when you were in the room before
26 they took you out of the room or told you to get dressed and come with them

1 did they tell you that you had a right to remain silent, a right to an attorney,
2 a right not to answer, that anything you did answer could be used against you,
3 did they advise you in other words of your rights?

4 A They didn't tell me anything they just took me to the police station.
5 And I told the police I had a lawyer and I want to talk to a lawyer and they
6 told me it was night now it is night and you have to wait until tomorrow.

7 COUNSEL: No further questions.

8 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

9 Q Mr. Spear.

10 TRIAL ATTORNEY TO RESPONDENT:

11 Q Did the Immigration Service at any time after you were turned over to them
12 advise you of your rights as far as speaking or right to counsel?

13 A Yes.

14 TRIAL ATTORNEY: No further questions.

15 COUNSEL: One more question.

16 IMMIGRATION JUDGE: Yes counsel.

17 COUNSEL TO RESPONDENT:

18 Q Mr. Castro were you advised of these rights which you say you were advised
19 by the Immigration Service before or after they searched you and took the
20 things out of your pockets which you previously testified to?

21 A From here they showed me a paper in Spanish and told me to read it.

22 Q Did they show you that paper and tell you to read it advising you of your
23 right before or after they searched you and took the documents that you stated
24 out of your pocket.

25 A First they searched me and after they showed me the paper.

26 COUNSEL: No further questions.

416 030 543

1 IMMIGRATION JUDGE TO RESPONDENT:

2 Q Now Mr. Castro this green card that the police asked you about was that
3 the green card that shows whether a person is a resident of this country?

4 A Yes the green card they told me.

5 Q Well this green card that you are referring to that is the card that is
6 given to people who come to this country for permanent and are admitted for
7 permanent residence. Is that right?

8 A The police had told me that this was a residence card, a green card.

9 Q And that is the card they asked you about as to whether you had. Is that
10 right?

11 A Yes.

12 Q Now when for the first time did you tell the police you had a lawyer?

13 A When they took me to the car I told them that I had a lawyer.

14 Q Well you say when they took you to the car at what stage was that?

15 A When I was sitting inside the car.

16 Q Was this enroute from your house to the police station or was it some
17 other time?

18 A When they told me to go inside the car I told them that I wanted to call
19 my lawyer. I sat inside the car and told the police, I told them that I had
20 a lawyer and I wanted to call the lawyer.

21 COUNSEL: If your honor, please, I renew my motion that was made at the beginning
22 of this hearing to suppress the identification and all identification documents
23 concerning the respondent on the ground that there absolutely no reasonable
24 basis how the Hampstead police could have arrested him, held him in custody and
25 delivered him to Immigration. And there again is his testimony about continued
26 illegal search at Immigration. I would move on that testimony for suppression.

A16 030 523

- 23 -

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46

1 At the very least it would certainly raise a basis to shift the burden of proof
2 over to the government to establish what the legal basis was for the arrest and
3 search and seizure.

4 IMMIGRATION JUDGE: Now Mr. Speer would you produce the immigration officer
5 who took the respondent into custody. I'll reserve the decision on your
6 motion until I hear the testimony of this officer. All right gentleman at
7 this time I will continue the hearing until Monday July 29, 1974 at 8:45 a.m.
8 at which time the trial attorney will produce the investigator and for further
9 appropriate action. Do you understand?

10 TRIAL ATTORNEY: I do.

11 COUNSEL: Yes.

12
13 I hereby certify that to the best of my knowledge and
14 belief the foregoing pages numbered 1 through 29
15 are a complete and accurate transcript of the above -
16 described proceedings.

17 Jerry Lee Jones
18 Signature
19 Transcriber
20 Title
21
22
23
24
25
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UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- 16 030 543

CARLOS ANTONIO CASTRO CAERERA

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: Henry I. Millman, Immigration Judge

Date: July 29, 1974 Place: 20 West Broadway

Transcribed by Terry Lee Jones Recorded by Distabolt

Official Interpreter Ane Rosner, (U.S.I.N.S.)

Language Spanish

APPEARANCES:

For the Service:

John E. Spear, Esq.
Trial Attorney

Station

For the Respondent:

David E. Oltarsh, Esq.

225 Broadway

New York, N.Y.

48

Continued.

1 IMMIGRATION JUDGE TO RESPONDENT: (Through interpreter)

2 Q Will you state your name please?

3 A Carlos Antonio Castro Cabrera.

4 Q Are you still represented by Mr. Oltarsh as your lawyer?

5 A Yes.

6 IMMIGRATION JUDGE TO COUNSEL:

7 Q How counsel are you ready to proceed?

8 A Yes your honor.

9 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

10 Q Mr. Spear are you?

11 A Ready your honor.

12 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

13 Q All right at this time Mr. Spear do you wish to present some testimony or
14 did you wish to interrogate the respondent any further?

15 A I do wish to present in documentary form some evidence regarding the
16 entry of the respondent into the United States.

17 Q How did you wish to question the respondent or have him put the respondent
18 under oath at this time?

19 A Put him under oath and then I'll ...

20 IMMIGRATION JUDGE TO RESPONDENT:

21 Q Will you stand up please and raise your right hand? Do you solemnly swear
22 that all the statements you are about to make in this proceeding will be the
23 truth, the whole truth and nothing but the truth so help you God?

24 A Yes.

25 Q Be seated.

26 IMMIGRATION JUDGE: Yes counsel.

A16 030 543

49

1 COUNSEL: At this time I would object to any questions put by Mr. Speer to the
2 respondent on the grounds that the hearing was closed with the sole exception
3 of producing the arresting officer or the officer who had knowledge about the
4 arrest from the Immigration Service. The testimony was produced on Thursday
5 regarding the circumstances of the arrest and what we claimed to be an illegal
6 search and seizure. So therefore if you want to entertain any motion by Mr.
7 Speer to reopen the case or reopen the testimony of Mr. Castro Cabrera that's
8 up to your honor but as I recall it the hearing was closed and all questions
9 were terminated of Mr. Castro Cabrera. It was only for the purpose of bringing
10 the government's officer who had knowledge of the arrest or the circumstances
11 surrounding the arrest.

12 IMMIGRATION JUDGE: No counsel I don't consider a motion necessary. The hearing
13 was continued. It wasn't closed and when a hearing is continued I would permit
14 additional questions of this person on the material issued. There is no point
15 in going through the motion of request for reopening because the hearing has
16 not been closed. Now did you wish to interrogate the respondent. Go ahead.

17 TRIAL ATTORNEY TO RESPONDENT:

18 Q Mr. Cabrera I have before me a Form I-409, Report of Deserting Crewman
19 and I won't read it at length because I intend to produce it into evidence to
20 become part of the record. But I will present it to you for counsel's inspec-
21 tion first.

22 IMMIGRATION JUDGE: All right now, you are making an offer Mr. Speer?

23 A Yes I'm making an offer into evidence.

24 COUNSEL: I object to it on the ground that it is not binding nor is there
25 any signature on there or anything to connect this respondent with that document
26 other than his name and what's on there.

1 Q I intend to offer other documents also. I offer this one document.

2 IMMIGRATION JUDGE: Well now Mr. Speer is this a document which is kept in the
3 regular course of business of the Immigration Service?

4 A This is kept in the regular course of business report a form used
5 routinely.

6 IMMIGRATION JUDGE TO RESPONDENT:

7 Q Mr. Cabrera I have before me a Report of Deserting Crewman taken from the
8 records of the Immigration Service relating to one Antonio Carlos Cabrera indi-
9 cating that he deserted a vessel on which he arrived namely the M/V Banana Core,
10 on August 13, 1972. The desertion took place at Newark. Are you the person
11 referred to in this report?

12 A I deserted in New Jersey not in Newark. Yes.

13 IMMIGRATION JUDGE: Well I'm marking this document into evidence as Exhibit 3.

14 Continue Mr. Speer.

15 TRIAL ATTORNEY TO RESPONDENT:

16 Q I have before me a Report of Investigation of Antonio Carlos Cabrera,
17 Form G-166E. At this time I would like to place it before Mr. Cabrera for
18 him and for his counsel to inspect, before offering this into evidence.

19 COUNSEL: On behalf of the respondent I would note the same objection. That
20 this document no where contains the signature of Mr. Carlos Castro Cabrera and
21 therefore it is not binding, nor is there any admission or any relevance to
22 the respondent.

23 IMMIGRATION JUDGE: Mr. Speer do you wish to question the respondent to iden-
24 tify the document? On the other hand this document is in the normal course
25 of investigation. Let us ask Mr. Cabrera whether the facts contained in here
26 relate to him.

1 COUNSEL: Well wait a second I just want to have the record straight.

2 Your honor stated that the respondent identified the document. He only
3 identified that was his name, to that extent he identified the document.

4 IMMIGRATION JUDGE: All right. He said that is his name.

5 TRIAL ATTORNEY TO RESPONDENT:

6 Q Let's ask him in this ... Mr. Cabrera are you the person named in this
7 document now before you?

8 A That's my name on the top.

9 TRIAL ATTORNEY: I want to make an offer of this document into evidence.

10 IMMIGRATION JUDGE: All right. I'm going to mark this form G-166E into
11 evidence. As Exhibit No. 4. Continue.

12 TRIAL ATTORNEY: I have here before me a copy of a telegraphic message and I
13 would like Mr. Cabrera to identify this document where underlined and after
14 doing so I intend to offer this document into evidence for whatever value it
15 have.

16 COUNSEL: May I note for the record the same objection that I made for the
17 other two documents. That it was not signed by him nor is it binding upon him.

18 TRIAL ATTORNEY TO RESPONDENT:

19 Q Mr. Cabrera could you identify the underlined portion of the telegram but
20 also not restricting yourself to that necessarily looking at the whole telegram
21 identify that as relating to you?

22 A Yes.

23 TRIAL ATTORNEY: I'll offer this...

24 IMMIGRATION JUDGE: Keep your voice up.

25 TRIAL ATTORNEY: I'll offer this document into evidence at this time.

26 IMMIGRATION JUDGE: All right this copy of the telegram will be marked as

1 Exhibit No. 5.

2 TRIAL ATTORNEY: I have before me now a copy of a Form I-95B and I'll ask Mr.
3 Cabrera would you identify this document as relating to you?

4 IMMIGRATION JUDGE: Mr. Speer would you indicate the source of this please?

5 A Yes. This is a form I-95B, Central Office Index Copy of Seaman's Permit.
6 Now I'll ask Mr. Cabrera to identify this?

7 COUNSEL: I'll note my same objection as to the preceding request.

8 IMMIGRATION JUDGE: All right.

9 TRIAL ATTORNEY: Note that in the normal course of business such a permit would
10 not normally be signed by the respondent.

11 COUNSEL: ...

12 TRIAL ATTORNEY TO INTERPRETER: Does this refer to the respondent?

13 A Yes sir.

14 Q All right. Let me introduce this into evidence.

15 IMMIGRATION JUDGE: And you stated that this is a copy taken from the official
16 records of the Immigration Service.

17 A Official records.

18 IMMIGRATION JUDGE: All right. I'll mark this copy of Form I-95B as Exhibit
19 No. 6. Continue.

20 TRIAL ATTORNEY: I have before me a letter which relates to Carlos Antonio
21 Castro Cabrera also known as Pedro Goya. If there is no objection I'll
22 ask the respondent to read this letter and then I'll intend to offer this
23 into evidence.

24 COUNSEL: I object to this on several grounds. It is obviously a letter not
25 kept in the regular course of business by the Immigration. It appears to be
26 a copy of a letter from the Hempstead Police Department, which I object to on

1 the ground that it is complete hearsay and certainly should not be binding
2 either upon this respondent or in this proceeding at all.

3 IMMIGRATION JUDGE: May I see this counsel.

4 COUNSEL: But I object.

5 IMMIGRATION JUDGE: Wait now you said something about withdrawing your previous
6 objection.

7 COUNSEL: No I withdraw my statement that the letter is from the Hempstead
8 police. It appears to be in the nature a poison pen letter or some kind of
9 letter complaining about this respondent addressed to the U.S. Immigration
10 Service with a CC: to the Chief of Police in Westbury. I object to it on
11 the grounds that it is hearsay and it is not even signed and if it purports
12 to be from some kind of informant his name is not even on it. I object to it
13 as being completely hearsay and not binding on this respondent.

14 IMMIGRATION JUDGE: What is the purpose of the offer.

15 TRIAL ATTORNEY: The purpose of this offer here is to indicate that the
16 respondent came to the attention of the Hempstead police through such a letter
17 or presumably came to the attention of the Hempstead Police ... are we on the
18 record.

19 IMMIGRATION JUDGE: Yes we are on the record.

20 COUNSEL: Did he also come to the attention of the Immigration Service?

21 TRIAL ATTORNEY: He came to the attention of the Immigration Service and also
22 came to the attention of the Westbury Police.

23 IMMIGRATION JUDGE: May I see the letter. Counsel, I'm going to overrule the
24 objection. I'm going to mark this letter into evidence as Exhibit No. 7.
25 Anything else Mr. Speer.

26 A Your honor I do not propose at this point to question the Service

1 Investigator. His presence has been requested by the respondent's counsel.

2 IMMIGRATION JUDGE: In other words you are making him available in the event
3 counsel wants to question him.

4 A Yes your honor.

5 IMMIGRATION JUDGE TO COUNSEL: Did you wish to interrogate the Service officer?

6 A Yes sir.

7 Q Well then let me put him under oath.

8 IMMIGRATION JUDGE TO WITNESS:

9 Q Would you state your name please?

10 A Jack Stearn.

11 Q And your title?

12 A I am an Investigator for the United States Immigration and Naturalization
13 Service.

14 Q Will you raise your right hand please. Do you solemnly swear that all
15 the statements you are about to make in this proceeding will be the truth,
16 the whole truth, and nothing but the truth so help you God?

17 A I do.

18 Q All right you may put your hand down.

19 IMMIGRATION JUDGE TO COUNSEL: Counsel you may inquire.

20 COUNSEL TO WITNESS:

21 Q Your name is Mr. Stearn?

22 A Stearn.

23 Q Mr. Stearn prior to June 21, 1974 did you have any particular familiarity
24 or knowledge of the existence of the file of Mr. ^{Carlos} Castro Cabrera?

25 A I didn't know about the file. I only had the letter.

26 Q Well the letter I specifically referred to prior to is dated June 21th.

1 IMMIGRATION JUDGE: It is dated June 20th counsel.

2 Q June 20th, 1974. So prior to receiving that letter which you couldn't
3 have received on the same date you didn't know anything about Carlos Castro
4 Cabrera. Is that right?

5 A ...

6 IMMIGRATION JUDGE: Now Mr. Stearn will you answer please.

7 A (Witness) Yes, sir.

8 Q Did that letter dated June 20th and addressed to the U.S. Immigration
9 Service with carbon copies to the Hempstead Police and Westbury Police come
10 to your attention at some time?

11 A Yes sir.

12 Q Do you have any recollection of the appropriate date that it came to
13 your attention?

14 A He was arrested on June 26. It was approximately about three or four
15 days before that.

16 Q I see. And what did you do if anything upon receiving that letter?

17 A Well I made plans to go and check out the house, the address where
18 Mr. Cabrera was living, residing.

19 COUNSEL TO IMMIGRATION JUDGE: Excuse me your honor may I see that exhibit.

20 IMMIGRATION JUDGE: Yes.

21 Q Did you have an opportunity to check out the house where Mr. Cabrera was
22 residing?

23 A No sir I did not.

24 Q Now you mentioned a moment ago that Mr. Castro Cabrera was arrested. May
25 I assume/that statement that he was not arrested by you?

26 A No he wasn't arrested as far as I know. What I know is that I was

1 notified by my supervisor to go to Hempstead police station where there was
2 an illegal alien.

3 Q Well in substance though he was not arrested by you in the customary sense
4 of your making the arrest. Is that right?

5 A Right.

6 Q Now Mr. Stearn you testified that prior to receipt of that letter which
7 is the letter of June 20th, 1974 you had no particular knowledge of Carlos
8 Castro Cabrera. Is that right?

9 A Yes sir.

10 Q So that it would be a fair statement to assume that prior to receipt of
11 that letter you were not actively out looking for Carlos Castro Cabrera. Is
12 that a fair statement?

13 A It is a fair statement.

14 Q Now when you were notified that Mr. Castro was under arrest by the
15 Hempstead Police, would it also be a fair statement that the Hempstead Police
16 did not arrest him under any instructions or directions from the Immigration
17 Service?

18 A Yes sir.

19 Q That is correct?

20 A Yes sir.

21 Q Now having been notified by the Hempstead Police that they had Mr. Castro
22 Cabrera-by the way where did they have him if you know?

23 A He was questioning him in a room in the station house.

24 Q He wasn't under arrest?

25 A Well wait a second. That's a conclusion that I don't want to get into.

26 But...

1 Q Was he detained?
2 A He was being detained.
3 Q He wasn't free to walk out was he to your knowledge?
4 A I didn't see anybody hindering him from walking out.
5 Q Well are you saying that if Mr. Castro Cabrera just got up and went
6 through the door nobody would stop him?
7 A As far as I know he couldn't. It seems ...
8 Q As far as you know.
9 A They hadn't booked him.
10 Q Did they ever book him to your knowledge?
11 A No sir.
12 Q Up until this date have you ever been advised of any charges whatsoever?
13 Having been filed against Mr. Castro Cabrera by the Hempstead or Westbury
14 Police?
15 A No sir.
16 Q In any event regardless of the description of whether he was under arrest
17 or not under arrest when you got there was he in custody to speak at this police
18 precinct?
19 A He was still in the precinct.
20 Q Were there police officers with him?
21 A Yes there was.
22 Q And you say they were questioning him?
23 A Yes sir.
24 Q Did you shortly thereafter take custody of Mr. Cabrera?
25 A After I spoke to him I placed him under arrest.
26 Q Do you speak Spanish?

A Yes, sir
A16 030 543

1 Q And you spoke to him at the precinct?
2 A Yes sir.
3 Q Did you at that time take any documents or papers from him?
4 A No.
5 Q Where was he taken after you left the police precinct on Long Island?
6 A He was held on my detainer at Mineola. There is a detention center
7 there—Hassan County Detention.
8 Q Where was he taken after that?
9 A ^{into} I picked him up and took him/the office.
10 Q From the time that you went out to the Hempstead or the Nassau County
11 Police precinct where you first encountered Mr. Castro Cabrera until the time
12 you brought him into 20 West Broadway—up until that time did you take any papers,
13 documents or other items from his person?
14 A No sir.
15 Q Did you continue to stay with Mr. Carlos Castro Cabrera after he arrived
16 at 20 West Broadway?
17 A Yes sir.
18 Q And were you continuously with him during the period of his questioning
19 or interrogation?
20 A Yes sir.
21 Q Did there come a time—at anytime that documents or other papers were taken
22 from his pockets or his person?
23 A Yes sir.
24 Q When was that sir?
25 A Before he was taken upstairs and placed in detention.
26 Q Who actually did that. You or somebody under your direction?

A16 OXC 543

1 A I did.

2 Q And what papers did you take from Mr. Castro Cabrera?

3 A I believe it was the I-95A.

4 TRIAL ATTORNEY: I'll object to the phraseology of the question. What papers
5 did you take addressed indicates an assumption that the investigator took the
6 papers. I would request that the question be rephrased to indicate method,
7 manner.

8 IMMIGRATION JUDGE: Well Mr. Speer the question already been asked and answered.
9 However, I will permit the witness to qualify this statement if any qualification
10 is in order.

11 COUNSEL: Might I note for the record. I don't think there's an assumption to
12 clarify or to aid the officer in explaining.

13 IMMIGRATION JUDGE: Well I'm saying that he's already given an answer. We
14 can clarify it later on if he deems, thinks a clarification is in order.
15 You may proceed.

16 COUNSEL TO WITNESS:

17 Q Now Mr. Stearn did the Immigration Service...

18 IMMIGRATION JUDGE: Will you repeat that question please.

19 Q Mr. Stearn to your knowledge from the time that you first were given this
20 case or this assignment up until the time that Mr. Castro Cabrera was picked
21 up at the precinct did you ever see any warrant issued by the Immigration Service
22 for the arrest of Mr. Castro Cabrera?

23 A No warrant was issued sir.

24 Q So that no warrant or any outstanding warrant for his arrest at any file
25 you were able to discover at anytime in connection with Mr. Castro Cabrera.
26 Is that right?

416 030 5243

- 36 -

7.29.74

100

1 A No sir. Because...

2 Q I didn't ask you why. I just asked you if there was a warrant for his
3 arrest.

4 A No warrant was issued counsel. We tried to check on his entry under the
5 name of Castro Cabrera and there was no record of his entry, so we couldn't
6 go for an Order to Show Cause a warrant without knowing how he entered the
7 United States. Once I spoke to him and did tell what name he entered the United
8 States under then I placed him under arrest without the warrant because I be-
9 lieve that he would abscond.

10 IMMIGRATION JUDGE: But wasn't a warrant issued at some stage of the proceeding?

11 A Yes sir. After he was brought to the office and I issued an Order to Show
12 Cause and a Warrant of Arrest was also issued.

13 Q All right continue counsel.

14 COUNSEL TO WITNESS:

15 Q However Mr. Stearn at that time he was already in your custody, was he
16 not? Did the Nassau or the Hempstead police ever tell you or do you have any
17 record or any papers that they might have given you as to what the reason was
18 that they took Mr. Castro Cabrera into custody?

19 A He had a copy of the same letter.

20 Q And without any further evidence to your knowledge and without any other
21 basis just on that letter they went to Mr. Castro's rented room and arrested
22 him based on that?

23 A I don't think they took him out of the room.

24 Q You didn't find him in his room. Did you?

25 A I wasn't there.

26 Q Now was this the original letter that they showed you or was any letter

416-630-543

1 they got signed by anybody?

2 A It was the same letter a photostatic copy.

3 Q Unsigned also?

4 A Unsigned.

5 Q And they told you nothing else other than what was in this letter was the
6 basis for them taking Mr. Castro Cabrera into custody?

7 A Yes.

8 Q And you yourself, sir, would it be correct to state had no knowledge of
9 anything that happened between the Nassau Police, Mr. Cabrera or in his room
10 until you saw him in the precinct in Nassau County. Is that correct?

11 A That's correct.

12 COUNSEL: I have no further questions your honor.

13 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

14 Q Do you wish to question the witness?

15 A Yes.

16 TRIAL ATTORNEY TO WITNESS:

17 Q Mr. Stearn at the time the Hempstead police alerted you or your supervisor
18 to the fact that the respondent was with them you were aware of this letter.

19 A Yes sir I was.

20 TRIAL ATTORNEY: I have no further questions.

21 IMMIGRATION JUDGE: All right you are excused. Thank you. All right are
22 there any further questions of the respondent on the issue of deportability?

23 COUNSEL: Not by me.

24 IMMIGRATION JUDGE: No counsel.

25 TRIAL ATTORNEY: I have no further questions.

26 IMMIGRATION JUDGE TO COUNSEL:

A16 030 543

- 38 -

7.29.74

1 Q Now counsel what application are you making in behalf of the respondent.

2 A Well I move on behalf of the respondent, your honor, I move the preliminary
3 motion which I made which is to suppress all the identification, information as
4 well as documents relating to this respondent Carlos Antonio Castro Cabrera on
5 the ground that all such information was obtained not only as a result of illegal
6 searches and seizures but also as the result of a baseless arrest without probable
7 cause. Though it be by the Hempstead police it certainly carried over right
8 through to the time that the information was taken from the respondent at 20
9 West Broadway pursuant to the respondent's testimony as to the occurrences which
10 took place from the time he was first arrested and he was brought to 20 West
11 Broadway.

12 IMMIGRATION JUDGE: All right. I am going to deny the motion. Is there any-
13 thing else.

14 COUNSEL: Subject to your honor making a finding.

15 IMMIGRATION JUDGE: Yes counsel.

16 A In view of your honor's denial of that motion to suppress this evidence
17 and I would then have a further application if your honor find the respondent
18 deportable I would move for voluntary departure in view of deportation.

19 Q Do you wish to question on the issue of voluntary departure.

20 A Well I believe that Mr. Spear bought out a lot of the information.

21 Q Well I'm asking you counsel.

22 A Yes.

23 COUNSEL TO RESPONDENT:

24 Q Mr. Castro Cabrera if you were given the option or the privilege of leaving
25 the country voluntarily in lieu of deportation and your rights were exhausted
26 would you do so?

A16 030 543

- 39 -

7-29-74

63

TRANSCRIPT OF HEARING

1 A Yes sir.

2 Q Now Mr. Castro Cabrera if given that permission to voluntarily leave the
3 country at no expense to the government do you have sufficient funds to pay
4 for your own transportation to Ecuador?

5 A Yes.

6 Q And have you ever been convicted of any crimes in any country of the
7 world?

8 A Never.

9 Q Have you ever been a member of the communist party?

10 A No.

11 Q Have you ever been a member of the communist party?

12 A No.

13 IMMIGRATION JUDGE TO TRIAL ATTORNEY: You don't wish to question respondent
14 any further?

15 A No further questions.

16 IMMIGRATION JUDGE TO RESPONDENT:

17 Q Mr. Cabrera were you ever in the United States before July 26, 1972?

18 A That was the first time.

19 Q You stated that in addition to the name Carlos Castro Cabrera you have used
20 the name Pedro Goya. Is that right?

21 A Yes.

22 Q Why did you use that name?

23 A Because they gave me the social security under that name so that I could
24 work.

25 Q Well when you did that did you know that it was improper for you to work
26 under your own name?

446-030 543

- 40 -

7.29.74

1 A I didn't know that.

2 Q Who gave you the name or who gave you the card Pedro Goya?

3 A A friend, a Puerto Rican.

4 Q But did you think it was proper to use a name other than your own in
5 connection with working in this country?

6 A He told me that nothing would happen.

7 Q Were you afraid if you used your own name that the Immigration Service might
8 locate you and force you to leave the country?

9 A I didn't know anything about them.

10 Q But did you think it was perfectly all right for you to stay in this
11 country and use a name other than your own name?

12 A I didn't know anything, but that Puerto Rican told me it was nothing wrong
13 with it.

14 Q Did you ask him why he suggested or assisted you in getting a social
15 security in that name?

16 A No he told me that I should go to work under that name.

17 Q Now if you are found to be subject to deportation, in other words to be
18 in the country illegally, and you are ordered deported from the United States
19 what country do you prefer to be deported to?

20 A I am from Ecuador but I don't wish to be deported I want to pay for my
21 tickets.

22 Q I understand that but the decision may be made in your case directing
23 your deportation from the United States. If that is the decision where do
24 you want to be deported to?

25 A To Ecuador.

26 Q Is there any reason why you can't return to Ecuador if ordered deported

416 030 543

- 41 -

7.29.74

65

1 there?

2 A No sir. I have no record ther. I have no criminal record in my country.

3 Q Have you ever been married?

4 A I'm single.

5 IMMIGRATION JUDGE: Gentleman is there anything else?

6 COUNSEL: No your honor.

7 IMMIGRATION JUDGE: The hearing is closed. Decision is reserved.

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I hereby certify that to the best of my knowledge and
belief the foregoing pages numbered 25 through 43
are a complete and accurate transcript of the above
described proceedings.

Tony Lee Jones
Signature
Member
Title

UNITED STATES DEPARTMENT OF JUSTICE
Immigration & Naturalization Service,
20 West Broadway,
New York, N.Y. 10007

In the Matter of :

CASTRO-CABRERA, Carlos Antonio :

File No. A 16 030 943

Respondent. :

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

PLEASE TAKE NOTICE, that the undersigned,
CASTRO-CABRERA, Carlos Antonio, will move that the Immigration
Service arrested, searched and seized the respondent without a
warrant and/or without reasonable or probable cause. The Ser-
vice will be called upon to assume the burden of justifying
the basis and facts upon which it took respondent into custody.
The respondent serves notice herewith that he wishes to give
sworn testimony at the hearing upon his personal knowledge of
the facts which show the illegal arrest, search and seizure.

The respondent herewith also demands that the
arresting officers be subpoenaed and produced at the hearing
because the respondent wishes to question them because their
testimony is relevant and material to the issue of the un-
reasonable arrest, search and seizure which was made without

probable cause. This is a motion to suppress the evidence illegally obtained.

Under Freedom of Information Act Section 552(b)7 and such other portions of the Act as may be applicable herein; all notes and memoranda relating to this case and which formed any basis for the detention and seizing of the respondent are demanded to be produced or the attorney for the respondent be permitted to inspect the same. Also demanded are the names and addresses of any alleged informants relating to the said detention and seizure of the respondent.

Castro-Cabrera, Carlos Antonio

Sworn to before me this

5 day of July, 1974

WILLIAM M. OLTARSH
NOTARY PUBLIC, State of New York
NO. 60-28815-0
Qualified in Westchester County
Commission Expires March 30, 1975

68

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. A 16 030 543

In the Matter of

CASTRO-CABRERA, Carlos Antonio aka CABRERO, Carlos Respondent.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Ecuador and a citizen of Ecuador;
3. You entered the United States at Tampa, Florida on or about July 26, 1972 ^(date);
4. At that time you were admitted as a nonimmigrant crewman authorized to remain in the United States for the period of time your vessel remained in port, not to exceed 29 days;
5. You remained in the United States thereafter without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at

20 W. Broadway, New York, N.Y., 14th floor

on June 28, 1974(S) at 1:00 P.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: June 27, 1974

Henry E. Wagner
ASSISTANT DISTRICT DIRECTOR
FOR INVESTIGATIONS, N.Y., N.Y.
(City and State)

69

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

☐ Detained in the custody of this Service.

☐ Released on recognizance.

☒ Released under bond in the amount of \$ 1000.00

You may request the Immigration Judge to redetermine this decision.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

☐ I do ☐ do not request a redetermination by an Immigration Judge of the custody decision.

Before:

(signature of respondent)

(signature and title of witnessing officer)

(date)

CERTIFICATE OF SERVICE

Served by me at _____ on _____ 19____ at _____ m.

(signature and title of employee or officer)